

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS  
\_\_\_\_\_ DIVISION

STATE OF ARKANSAS, *ex rel.*  
TIM GRIFFIN, ATTORNEY GENERAL

PLAINTIFF

v. CASE NO. 04CV-23-\_\_\_\_\_

GROUND ZERO CONSTRUCTION, INC.;  
and ROD GARMAN

DEFENDANTS

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COMPLAINT

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The State of Arkansas, *ex rel.* Tim Griffin, Attorney General (“the State”), for its Complaint against Defendant Ground Zero Construction, Inc., and Rod Garman (collectively, “Ground Zero”) states:

I. INTRODUCTION

1. The State brings this action to recover civil penalties pursuant to the Arkansas Underground Facilities Damage Prevention Act (“AUFDP”), Ark. Code Ann. § 14-271-101, *et seq.* and the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. § 4-88-101, *et seq.* The State also seeks to force Defendants to attend training conducted by the One Call Center pursuant to Ark. Code Ann. § 14-271-104(a)(1).

2. Defendants Ground Zero and Garman operate a construction company based in Arkansas.

3. According to their website, Ground Zero’s objective is “to exceed expectations by delivering quality, safe projects within strict time frames and budgets.”<sup>1</sup> Ground Zero also claims it specializes in underground utilities, excavation, and drilling.

4. Despite Ground Zero’s claim it specializes in underground utilities and excavation, it has repeatedly failed to comply with the AUFDP, causing damage to natural gas lines. Ground Zero’s repeated failure to comply with the AUFDP is an unconscionable business practice. By repeatedly damaging underground facilities, Ground Zero puts the public at risk of harm.

5. The State seeks an injunction, an order imposing civil penalties, and all just and proper relief to which it may be entitled.

## II. PARTIES

6. Plaintiff is the State of Arkansas, *ex rel.* Tim Griffin, Attorney General. Pursuant to Ark. Code Ann. § 14-271-104(b)(1)(A), the State, by the Attorney General, may seek civil enforcement of violations of the AUFDP. The State, by the Attorney General, may also seek civil enforcement of violations of the ADTPA, Ark. Code Ann. § 4-88-101, *et seq.*

7. Defendant Ground Zero Construction, Inc. is an Arkansas for-profit corporation registered with the Arkansas Secretary of State. Upon information and belief, its mailing address is P.O. Box 830, Siloam Springs, Benton County, Arkansas. Its registered agent is Rod Garman, and his address is 133357 Reading Road, Siloam Springs, Benton County, Arkansas. Ground Zero is a “person” pursuant to Ark. Code Ann. § 14-271-102(13) who performs excavation services.

8. Defendant Rod Garman is the Owner, President, and/or Treasurer of Ground Zero Construction, Inc. He is also the registered agent of Ground Zero Construction, Inc. His address is

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<sup>1</sup> *Construction Services*, Ground Zero Construction (Mar. 8, 2023, 2:40 PM), [www.groundzeroconstruction.org/services](http://www.groundzeroconstruction.org/services).

listed as 133357 Reading Road, Siloam Springs, Benton County, Arkansas. Garman is a “person” pursuant to Ark. Code Ann. § 14-271-102(13) who performs excavation services.

9. At all times relevant herein, Defendants were “persons” who engaged in the practices alleged herein that constitute the provision of “services.” Ark. Code Ann. § 4-88-102(5) and (7).

10. Defendants’ provision of excavation services constitutes business, commerce, and/or trade in Arkansas.

### **III. JURISDICTION**

11. This Court has jurisdiction over this matter and the common law of the State of Arkansas. Ark. Code Ann. § 14-271-104(b)(1); Ark. Code Ann. § 4-88-104; Ark. Code Ann. § 4-88-112.

12. Defendants have excavated and damaged underground natural gas pipelines in violation of the AUFDPDA within the applicable statute of limitations. This Court has personal jurisdiction over Defendants pursuant to Ark. Code Ann. § 16-4-101. Defendants have availed themselves of the benefit of transacting business in Arkansas by offering excavation services.

13. Venue is proper pursuant to Ark. Code Ann. § 14-271-104(b)(1), Ark. Code Ann. § 4-88-104, Ark. Code Ann. § 4-88-112, and the common law of the State of Arkansas.

### **IV. THE AUFDPDA**

14. The AUFDPDA’s purpose is to prevent damage to underground facilities during excavation or demolition.

15. Underground facilities are any underground lines, systems, or appurtenances that are used for producing, storing, conveying, transmitting, or distributing communications, data,

electricity, natural gas, heat, water, steam, chemicals, television, radio transmissions or signals, or sewage. Ark. Code Ann. § 14-271-102(17)(A).

16. Excavation is the means to dig, compress, or remove earth, rock, or other materials in or on the ground by use of mechanized equipment, tools manipulated only by human or animal power, or blasting. Ark. Code Ann. § 14-271-102(5).

17. The AUFDPDA laid the foundation for the creation of the One Call Center. Ark. Code Ann. § 14-271-103.<sup>2</sup>

18. All operators of underground facilities must become members of the “One Call Center.” Ark. Code Ann. § 14-271-107(a).

19. Each of the members must provide a notice that includes a list of the geographic areas where facilities are located, providing as much specific information as reasonably possible, the name of the member operator, and the name, title, address, and telephone number of its representative designated to respond to notices of intent to excavate. Ark. Code Ann. § 14-271-108(a).

20. Before anyone can excavate, they must notify the One Call Center at least two (2) days, but no more than ten (10) full working days, before the excavation. Ark. Code Ann. § 14-271-112(b)(1). This notice must contain the name of the person notifying the One Call Center, the name, address, and telephone number of the person responsible for the excavation or demolition, the starting date, anticipated duration and type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition, and whether explosives will be used. Ark. Code Ann. § 14-271-112(c)(1)(A).

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<sup>2</sup> Under 49 C.F.R. § 198.31, the State is required “to adopt a one-call damage prevention program as a condition to receiving a full grant-in-aid for its pipeline safety compliance program.”

21. This notice is effective for twenty (20) working days from the date that the notice was given. Ark. Code Ann. § 14-271-112(b)(3)(A). If the work is not completed within this time frame or if the location markings have been removed or are no longer visible, the excavator must provide a new notice. Ark. Code Ann. § 14-271-112(b)(3)(B).

22. Within four (4) working hours after receiving the notice of intent to excavate, the One Call Center must notify all member operators of underground facilities in the excavation area. Ark. Code Ann. § 14-271-110(a)(1). The One Call Center must also give the excavator the names of these underground facility operators as soon as practicable. Ark. Code Ann. § 14-271-112(d).

23. The operator must provide the excavator with information that identifies the approximate center line, approximate depth (when known), and dimensions of the underground facility. Ark. Code Ann. § 14-271-110(a)(3). Unless otherwise agreed in writing, the operator must identify the approximate location of the facilities by field-marking on the surface by paint, dye, stakes, or any other clearly visible marking that designates the horizontal course of the facilities within two (2) working days after notification from the One Call Center. Ark. Code Ann. § 14-271-110(a)(2)(A)(i).

24. When the excavator is excavating within the approximate location of an underground facility, the excavator must only use a method approved by the operator. Ark. Code Ann. § 14-271-110(a)(5)(A).

25. The “approximate location” of an underground facility is defined as a strip of land of at least three feet wide but not wider than the width of the facility plus one and one-half feet on either side of the facility. Ark. Code Ann. § 14-271-102(1).

26. Mechanized equipment cannot be used without the express approval of the operator. Ark. Code Ann. § 14-271-110(a)(5)(B). “Mechanized equipment” means any equipment operated by means of mechanical power. Ark. Code Ann. § 14-271-102(9)(A).

27. An excavator must confirm through the One Call Center that all operators have responded and that all facilities that may be affected by its proposed excavation have been marked before it may excavate. Ark. Code Ann. § 14-271-110(a)(5)(C). An excavator cannot excavate within the waiting period unless all operators have responded to the intent to excavate. Ark. Code Ann. § 14-271-110(a)(5)(D).

#### **V. FACTUAL ALLEGATIONS**

28. Ground Zero has repeatedly failed to comply with the AUFDPDPA and caused damage to underground natural gas facilities owned and operated by Black Hills Energy Arkansas, Inc., d/b/a Black Hills Energy.

29. As a result, Black Hills Energy has submitted numerous complaints to the One Call Center.

30. On April 1, 2021, Ground Zero struck and damaged a natural gas pipeline owned and operated by Black Hills Energy. Ground Zero used a backhoe, a form of mechanized equipment, within the eighteen-inch tolerance zone in violation of the AUFDPDPA. Ark. Code Ann. § 14-271-102(1); Ark. Code Ann. § 14-271-110(a)(5)(B). The damage occurred at the corner of Gene George Boulevard and W. Sunset Avenue in Springdale, Arkansas.

31. On June 18, 2021, Ground Zero struck and damaged a natural gas pipeline owned and operated by Black Hills Energy. Ground Zero used a backhoe, a form of mechanized equipment, within the eighteen-inch tolerance zone in violation of the AUFDPDPA. Ark. Code Ann.

§ 14-271-102(1); Ark. Code Ann. § 14-271-110(a)(5)(B). The damage occurred at the intersection of Gene George Boulevard and W. Sunset Avenue in Springdale, Arkansas.

32. On November 13, 2021, Ground Zero struck and damaged a natural gas pipeline owned and operated by Black Hills Energy. Ground Zero notified Arkansas 811 of its intent to excavate the damaged area on August 17, 2021. Ground Zero improperly excavated fifty-six (56) business days after it submitted an excavation request. By then, Black Hills Energy's markings had disappeared, but Ground Zero excavated without renewing its notification to the One Call Center in violation of Ark. Code Ann. § 14-271-112(b)(3)(B). Approximately twenty of Black Hills Energy's customers had natural gas service interrupted due to Ground Zero's damage to the natural gas pipeline. The damage occurred at the intersection of Southwest Barron and Piercy Road in Bentonville, Arkansas.

33. On January 25, 2022, Ground Zero struck and damaged a natural gas pipeline owned and operated by Black Hills Energy. Ground Zero used a trackhoe, a form of mechanized equipment, within the eighteen-inch tolerance zone in violation of the AUFDP. Ark. Code Ann. § 14-271-102(1); Ark. Code Ann. § 14-271-110(a)(5)(B). Ground Zero also did not verify depth prior to its excavation. This damage occurred at 416 Mt. Hebron Road, Lowell, Arkansas.

34. On July 25, 2022, Ground Zero struck and damaged a natural gas pipeline owned and operated by Black Hills Energy. Ground Zero excavated without a valid locate request. Ground Zero also used mechanized equipment within the eighteen-inch tolerance zone in violation of the AUFDP. Ark. Code Ann. § 14-271-102(1); Ark. Code Ann. § 14-271-110(a)(5)(B). Black Hills Energy offered training to Ground Zero's employees on the safe-digging practices, but Ground Zero refused any help. The damage occurred at 416 Mt. Hebron Road, Lowell, Arkansas.

35. On October 3, 2022, Ground Zero struck and damaged a natural gas pipeline owned and operated by Black Hills Energy. Ground Zero failed to excavate with due care. The damage occurred at 3611 Blue Stone Street in Fayetteville, Arkansas.

36. On April 8, 2023, Ground Zero struck and damaged two-inch poly distribution. Ground Zero did not call 811 for location markings in violation of Ark. Code Ann. § 14-271-112(b)(1). The damage occurred at the Myers and Oliver Street intersection in Pea Ridge, Arkansas.

37. Ground Zero's unconscionable business practices have caused thousands of dollars' worth of damage to Black Hills Energy's underground facilities, has interrupted natural gas service to Black Hills Energy's customers and put people at risk of harm.

38. Ground Zero describes itself as a "family business" owned by Rod Garman. Upon information and belief, Rod Garman controls the day-to-day operations of Ground Zero's business. Rod Garman is equally liable for Ground Zero's unconscionable business practices pursuant to Ark. Code Ann. § 4-88-113(d)(1).

## **VI. VIOLATIONS OF LAW<sup>3</sup>**

### **Count I – Violations of the AUFDP**

39. The State of Arkansas repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

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<sup>3</sup> The State of Arkansas seeks independent relief for each of Defendants' separate acts. For readability, the State includes three separate Counts. Ground Zero committed multiple violations within each Count.

40. Ground Zero repeatedly excavates in violation of the AUFDPa by using improper mechanized equipment, failing to use care, and excavating without providing proper notice to the One Call Center.

Count II – Violations of the ADTPA: False Representation

41. The State of Arkansas repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

42. The ADTPA sets forth the State’s statutory program prohibiting deceptive and unconscionable trade practices. Ark. Code Ann. §§ 4-88-101, *et seq.*

43. It is an unlawful, deceptive, and unconscionable trade practice to knowingly make a false representation as to the characteristics of services. Ark. Code Ann. § 4-88-107(a)(1).

44. Ground Zero claims it specializes in providing quality excavation services. Yet, Ground Zero repeatedly excavates in violation of the AUFDPa. Ground Zero repeatedly causes damage to underground facilities and puts the public at risk of harm.

Count III – Violations of the ADTPA: Unconscionable Practice in Business

45. The State of Arkansas repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

46. The ADTPA prohibits a person from engaging in an “unconscionable, false, or deceptive act or practice in business, commerce, or trade.” Ark. Code Ann. § 4-88-107(a)(10). An act is unconscionable “if it affronts the sense of justice, decency, and reasonableness.”<sup>4</sup> Unconscionable conduct includes conduct violative of public policy or statute.<sup>5</sup>

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<sup>4</sup> *Gulfc0 of La., Inc. v. Brantley*, 2013 Ark. 367, at 9, 430 S.W.3d 7, 13.

<sup>5</sup> *Baptist Health v. Murphy*, 365 Ark. 115, 128, 226 S.W.3d 800, 811 (2006).

47. Ground Zero continuously excavates without any concern for the safety of the public for its own profit. This affronts all sense of decency or reasonableness.

## **VII. PRAYER FOR RELIEF**

48. Pursuant to the AUFDPDA, the Attorney General seeks an order requiring Ground Zero and its employees to attend training conducted by the One Call Center pursuant to Ark. Code Ann. § 14-271-104(a)(1). The Attorney General also seeks civil penalties under the AUFDPDA. Ark. Code Ann. § 14-271-104(a)(2)(A)(iii). The Attorney General seeks to enjoin Defendants' violations of 49 C.F.R. Part 198, Subpart C, as it existed on January 1, 2023. Ark. Code Ann. § 14-271-104(c).

49. Pursuant to Ark. Code Ann. § 4-88-113(a), the Attorney General may bring a civil action seeking to prevent persons from engaging in the use or employment of any prohibited practices. Under the provisions of Ark. Code Ann. §§ 4-88-104, the Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.

50. Pursuant to Ark. Code Ann. § 4-88-113(a)(3), any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000.00 per violation.

51. Pursuant to Ark. Code Ann. § 4-88-113(b), the Attorney General may petition the Court to order the suspension or forfeiture of franchises, corporate charters, or other licenses or permits or authorization to do business in this state.

52. Likewise, under the provisions of Ark. Code Ann. § 4-88-113(e), any person who violates the provisions of the ADTPA shall be liable to the Attorney General for all costs and fees, including, but not limited to, expert witness fees and attorneys' fees incurred by the Attorney General in the prosecution of such actions.

53. Pursuant to Ark. Code Ann. § 4-88-113(d)(1), “[e]very person who directly or indirectly controls another person who is in violation of or liable under” the ADTPA and every partner, officer, or director of another person who is liable thereunder “shall be jointly and severally liable for any penalties assessed and any monetary judgments awarded in any proceeding for civil enforcement of the provisions of” the ADTPA, “provided that the persons to be held jointly and severally liable knew or reasonably should have known of the existence of the facts by reason of which the violation or liability exists.”

54. A “person” is an individual, organization, group, association, partnership, corporation, or any combination thereof. Ark. Code Ann. § 4-88-102(5).

55. The Defendants are “persons” who have engaged in unconscionable, false, or deceptive acts or practices in business, commerce, or trade, as alleged herein.

56. The State demands a trial by jury.

57. The State reserves the right to amend its Complaint and plead further.

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Tim Griffin, Attorney General, respectfully requests that this Honorable Court:

- a. Issue an injunction, pursuant to Ark. Code Ann. § 4-88-104, preventing Defendants from engaging in any deceptive or unconscionable acts or practices;
- b. Issue an injunction pursuant to the AUFDDPA preventing Defendants from violating the Act;
- c. Impose civil penalties, pursuant to Ark. Code Ann. § 4-88-113(a)(3), against Defendants in the amount of \$10,000.00 per violation for each violation of the ADTPA proved at the trial of this matter;

- d. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(b), forfeiting the corporate charters, licenses, permits, and authorizations to do business in Arkansas which may currently be enjoyed by Defendants;
- e. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(e), requiring Defendants to pay the State's costs and fees in this litigation, including, but not limited to, attorneys' fees;
- f. Issue an order requiring Defendants and their employees attend training conducted by the One Call Center and pay civil penalties pursuant to the AUFDPDA;
- g. Expedite this matter on this Court's docket pursuant to Ark. Code Ann. § 16-106-101(c);
- h. Grant all other relief that may be just and appropriate.

Respectfully submitted,

TIM GRIFFIN  
Attorney General

By:



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